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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,555	02/24/2004	Cary B. Cochenour	040073	8139

7590

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Craig G. Cochenour, Esq.  
Buchanan Ingersoll PC  
One Oxford Centre, 20th Floor  
301 Grant Street  
Pittsburgh, PA 15219

EXAMINER

WILLIAMS, KENNETH C

ART UNIT

PAPER NUMBER

3739

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/785,555		COCHENOUR ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Kenneth C. Williams		3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 April 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The declaration filed on April 26, 2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the Park reference.
2. The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Park reference. The affidavit states "February 15, 2003" as the date of the "Finish Project". The priority date of the Park reference is January 15, 2003.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-5 and 7-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park (U.S. Patent Application Publication No. US 2004/0195227) in view of Ligeras (U.S. Patent No. 5516189).

a. In regards to Claim 1, Park discloses “[A] patient activated temperature-controlled surface comprising a floor” (See Park, Figure 5, Reference 55), “a temperature source capable of supplying either heat or cold, or both, to said floor” (See Park, Figure 5, Reference 20; See also Paragraph [0025], Lines 1-7), “wherein said actuator element is activated and deactivated by the presence or absence of the weight of the patient” (See also Paragraph [0029], Lines 1-5).

Park does not disclose “an actuator element that is capable of controlling the flow of an electrical current from an electrical utility to said temperature source for turning on and off said temperature source”. Attention is directed to the Ligeras reference, which in a similar field of endeavor, discloses “wiring is provided, fully within the capability of those presently skilled in the electrical connection arts, so that the switch 22 converts from AC to DC (and in a reverse direction) in order to accommodate both AC power and plug 24, and DC power and plug 26” (See Ligeras, Figures 1 and 4, References 24 and 26; See also Column 2, Lines 44-51). In light of the teaching of Ligeras, it would have been obvious to one of ordinary skill in the art at the time of the applicant’s invention to provide an actuator element that is capable of controlling the flow of an electrical current from an AC or DC power source in the device of Park, because of the portable nature of the apparatus, the device could be used in the home where it would be preferable to use an AC power source.

b. In regards to Claim 2, Park and Ligeras disclose "wherein said actuator element is capable of allowing or preventing the flow of said electrical current to said temperature source" (See Park, Figure 1, Reference 23).

c. In regards to Claim 3, Park discloses, "wherein said actuator element is connected to a power source" (See Park, Figure 1).

Park does not disclose, "wherein said power source is from an electric utility". Attention is directed to the Ligeras reference, which in a similar field of endeavor, discloses "wiring is provided, fully within the capability of those presently skilled in the electrical connection arts, so that the switch 22 converts from AC to DC (and in a reverse direction) in order to accommodate both AC power and plug 24, and DC power and plug 26" (See Ligeras, Figures 1 and 4, References 24 and 26; See also Column 2, Lines 44-51). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to provide the capability of controlling the flow of an electrical current from an AC or DC power source. Because of the portable nature of the apparatus, the device could be used in the home where it would be preferable to use an AC power source.

d. In regards to Claim 4, Park and Ligeras disclose "wherein said temperature source is located in juxtaposition to said floor, and wherein said floor allows said heat or cold to pass from said temperature source through said floor and wherein said actuator element is located in juxtaposition to said floor" (See Park, Figures 2 and 5).

- e. In regards to Claim 5, Park and Ligeras disclose "wherein said actuator element provides an electrical bias" (See Park, Figure 1, Bias to "open circuit").
- f. In regards to Claim 7, Park and Ligeras disclose "wherein said actuator element is a pressure sensitive switch" (See Park, Paragraph [0020], Lines 4-5).
- g. In regards to Claim 8, Park and Ligeras disclose "wherein said switch is a momentary switch" (See Park, Paragraph [0029], Lines 1-5; See also Paragraphs [0034] and [0035]).
- h. In regards to Claim 9, Park and Ligeras disclose "wherein said temperature source is located beneath said floor" (See Park, Figure 5, Reference 20).
- i. In regards to Claim 10, Park and Ligeras disclose "wherein said floor is a bed for accommodating the resting of a patient" (See Park, Paragraph [0037], Lines 1-2).
- j. In regards to Claim 11, Park and Ligeras disclose "wherein said bed is surrounded by at least one wall" (See Park, Figure 5, Reference to upright seat portion).
- k. In regards to Claim 12, Park and Ligeras disclose "wherein said wall has at least one opening that allows for the ingress and egress of the patient in and out of said bed" (See Park, Figure 5, Reference to upright seat portion – Examiner reads lack of wall on three sides of cushion to be "at least one opening that allows for the ingress and egress of the patient").

- l. In regards to Claim 13, Park and Ligeras disclose "wherein said temperature source includes an adjustable thermostat" (See Park, Figure 1, Reference 15; See also Paragraph [0027], Lines 1-4).
- m. In regard to Claim 14, Park discloses "[A]n animal bed comprising a floor" (See Park, Figure 5, Reference 55), "a temperature source capable of supplying either heat or cold or both to said floor" (See Park, Figure 5, Reference 20; See also Paragraph [0025], Lines 1-7), "and an actuator element that is capable of controlling the flow of an electrical current to said temperature source for turning on and off said temperature source" (See Park, Paragraph [0021], Lines 4-5), "wherein said actuator element is activated and deactivated by the presence or absence of the weight of the animal on the bed" (See also Paragraph [0029], Lines 1-5).

Park does not disclose "an actuator element that is capable of controlling the flow of an electrical current from an electric utility to said temperature source for turning on and off said temperature source". Attention is directed to the Ligeras reference, which in a similar field of endeavor, discloses "wiring is provided, fully within the capability of those presently skilled in the electrical connection arts, so that the switch 22 converts from AC to DC (and in a reverse direction) in order to accommodate both AC power and plug 24, and DC power and plug 26" (See Ligeras, Figures 1 and 4, References 24 and 26; See also Column 2, Lines 44-51). In light of the teaching of Ligeras, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to

provide the capability of controlling the flow of an electrical current from an AC or DC power source in the device of Park, because of the portable nature of the apparatus, the device could be used in the home where it would be preferable to use an AC power source.

n. In regards to Claim 15-20, the method steps are considered inherent in the operation of the device disclosed by Park.

Park does not disclose "an actuator element that is capable of controlling the flow of an electrical current from an electric utility to said temperature source for turning on and off said temperature source". Attention is directed to the Ligeras reference, which in a similar field of endeavor, discloses "wiring is provided, fully within the capability of those presently skilled in the electrical connection arts, so that the switch 22 converts from AC to DC (and in a reverse direction) in order to accommodate both AC power and plug 24, and DC power and plug 26" (See Ligeras, Figures 1 and 4, References 24 and 26; See also Column 2, Lines 44-51). In light of the teaching of Ligeras, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to provide the capability of controlling the flow of an electrical current from an AC or DC power source in the device of Park, because of the portable nature of the apparatus, the device could be used in the home where it would be preferable to use an AC power source.



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6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Park in view of Ligeras as applied to claims 1-5 and 7-20 above, and further in view of Goldston et al (U.S. Patent No. 5303485).

In regards to Claim 6, Park and Ligeras disclose "[A] patient activated temperature controlled surface" (See Claim 1 Rejection). Park and Ligeras further disclose, "wherein said actuator is a pressure sensitive switch". Park and Ligeras do not disclose, "wherein said actuator element is a transistor". Goldston et al. teaches the use of a transistor in place of a pressure sensitive switch (See Goldston et al., Column 9, Lines 4-15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a transistor as taught by Goldston et al. as the actuator disclosed by Park and Ligeras in order to provide a more sophisticated switching means responsive to the presence or absence of the weight of a patient.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent Application Publication No. US 2004/0040946 A1 to Nation – Nation discloses a heating element embedded material for seats and other uses running on DC or AC power.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth C. Williams whose telephone number is (571) 272-8161. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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KCW

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A handwritten signature in black ink, appearing to read 'Linda C. M. Dvorak', is written over a large, stylized, handwritten letter 'D'.

LINDA C. M. DVORAK  
SUPERVISORY PATENT EXAMINER  
GROUP 3700